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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

J.P.,

Petitioner,

v.

THE SUPERIOR COURT OF SANTA  
CLARA

Respondent,

SANTA CLARA COUNTY DEPT. OF  
FAMILY & CHILDREN'S SERVICES,

Real Party in Interest.

No. H040114

(Santa Clara County  
Super. Ct. No. JD21226)

Petitioner J.P., father of the minor J.G., seeks a writ of mandate (Cal. Rules of Court, rule 8.452)<sup>1</sup> directing the juvenile court to vacate its orders setting a Welfare and Institutions Code section 366.26 hearing<sup>2</sup> and terminating family reunification services and to order additional family reunification services for him. He claims that he is entitled to this relief because substantial evidence does not support the juvenile court's finding

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<sup>1</sup> All further references to rules are to the California Rules of Court.

<sup>2</sup> All further statutory references are to Welfare and Institutions Code.

that reasonable reunification services were provided.<sup>3</sup> Specifically, he asserts that the Santa Clara County Department of Family and Children's Services (Department or DFCS) "failed to follow-up" with its critical referral of father to a Parenting the Medically Fragile Child class. We conclude that substantial evidence supports the challenged finding and deny writ relief on the merits.

## I

### *Procedural History*

#### *Dependency Petition*

On May 16, 2012, a juvenile dependency petition was filed on behalf of Baby Boy G. The court issued a protective custody warrant for him.

On May 18, 2012, a first amended petition was filed on behalf of minor J.G. under section 300, subdivision (b) (parental failure to protect). The petition alleged the following. Mother tested positive for methamphetamines at the time of minor's delivery and she had admitted to daily use of heroin. Minor J.G. had been born at 35 weeks gestation. Mother received no prenatal care during the pregnancy. At the time of the petition, minor was on a medical ventilator in intensive care at Santa Clara Valley Medical Center (VMC).

Minor J.G. had three half-siblings. They had been removed from mother's custody at various times and she had failed to reunify with them. Her parental rights had been terminated in 1997 as to one half-sibling and in 2009 as to the other two.

Mother had an extensive criminal record. Her record included "multiple convictions since 2006 for use/under the influence of a controlled substance, possession of a narcotic controlled substance, possession of controlled substance paraphernalia,

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<sup>3</sup> Although father did not timely file his petition for extraordinary writ review, this court allowed the petition to be filed.

[and] possession of a hypodermic needle/syringe." Mother was a registered narcotics offender until November 21, 2018.

Petitioner J.P. had stated that he was unable to provide for the care of the child due to a lack of support, financial stability and transportation.

#### *Jurisdiction and Disposition Orders*

A jurisdiction report was filed. At the time of the report, minor was in protective custody and remained at VMC in the Neonatal Intensive Care Unit (NICU).

On June 26, 2012, the juvenile court conducted the jurisdiction hearing. Petitioner was not present. The court sustained the first amended petition, finding that its allegations as amended were true and minor J.G. was a child described by section 300, subdivision (b).

At the time of the disposition report, dated June 26, 2012, minor was still in VMC's NICU. Minor's prolonged stay was attributed to the need to wean him off the morphine used to deal with his withdrawal symptoms from mother's heroin abuse during pregnancy. Minor J.G. had been diagnosed with a cleft palate. The DFCS had made unsuccessful attempts to communicate with petitioner. Petitioner resided with mother but they were not married. The report set out the evidence supporting the petition's allegations.

An addendum report indicated that a paternity test had shown there was a 99.99 percent probability that petitioner was minor's biological father. Another addendum report recommended family reunification services to petitioner to assist him in understanding the dynamics surrounding mother's substance abuse problems and appropriate parenting to keep minor safe. The report indicated that petitioner was absent from the home for the majority of the day due to his work responsibilities.

A dispositional hearing was held on August 31, 2012. Petitioner J.P. was declared to be the presumed father of minor J.G. The court declared minor J.G. to be a dependent

child of the court. It ordered minor to continue under the Department's care, custody and control for placement with a foster home.

The court ordered both parents to participate in and successfully complete the Department's Parent Orientation Class and a substance abuse parenting class. In addition, mother was required to submit to random testing, attend and complete a 12-step program, undergo a substance abuse assessment and complete recommended drug treatment programs, complete an "aftercare" drug treatment program, develop an "aftercare" relapse prevention plan, and participate in individual counseling. Petitioner J.P. was required to attend and participate in weekly Al-Anon meetings at least once a week and to provide written proof of attendance. The court ordered supervised visitation of one hour at least twice a week for each parent.

#### *Six-Month Review*

The six-month review report, dated March 4, 2013, indicated that minor suffered from some serious medical problems. During his hospitalization, he had undergone surgery to insert a G-tube into his stomach due to a failure to thrive and inability to bottle feed. He had been diagnosed with "microdeletion of chromosome 15, a rare genetic condition . . . ." The report stated that "[e]very person with a 15q13.3 microdeletion is unique" but children with such a condition were "likely to need support" for "learning, speech and communication delays, seizure or abnormal EED [sic], delayed mobility due to low muscle tone, [and] behavioral difficulties such as autistic spectrum disorder or ADHD" (attention deficit hyperactivity disorder). In addition, the condition sometimes resulted in "aggressive behavior and rage and subtly unusual facial features."

At the time of that report, minor required special attention because of his G-tube dependency, his chromosome microdeletion diagnosis, and his cleft palate. His oral feedings had not improved much and his foster parents were keeping a detailed food log for the feeding therapist. The report noted that feeding him required his foster parents to

be aware of "the signs of food going into his sinuses" and they usually kept "a bulb syringe suction nearby in case the food [came] out of his nose."

The six-month review report stated that minor's physical therapist indicated that minor continued to have low tone in his legs and was not making as much progress as she would like. The foster parents were spending a lot of time working with him on improving his leg tone.

The report further indicated that parents had arrived late to their Parent Orientation Class and they had not been allowed into the class. The social worker had submitted new referrals for that class. Both parents had completed a parenting class for ages one to five in October 2012.<sup>4</sup> Petitioner had been provided with a list of Spanish-speaking Al-Anon meetings but he was not consistently attending meetings. The social worker noted petitioner had difficulty attending the meetings due to his demanding work schedule and evening supervised visits.

In the six-month review report, the social worker recommended that parents learn about the requirements for caring of a medically fragile child such as minor. It stated that parents should attend minor's "medical appointments with his occupational therapist, neurologist, craniofacial surgeons who will repair his cleft palate, his pediatrician, the feeding evaluations with a specialized therapist, the public health nurse, physical therapist and gastroenterologist for G-tube change out."

An addendum report, dated March 4, 2013, stated that minor had been admitted to the pediatric intensive care unit at VMC with a respiratory infection. An addendum report, dated April 2, 2013, reported that minor had been released from the hospital but continued to have significant difficulty feeding. Minor was receiving daily "overnight G-tube feedings" and he had "a complicated feeding regimen." The social worker was

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<sup>4</sup> The report does not explain why they took this class instead of a substance abuse parenting class as required in the written dispositional orders.

investigating whether the Department's public health nurses could provide coaching on G-tube feedings and minor's daily care. In that report, the social worker specifically recommended that the court require parents, as part of their case plans, to complete a Parenting the Medically Fragile Child class and attend minor's scheduled medical appointments in order to better understand and appreciate the care necessary to meet his special needs.

At the sixth-month review hearing on April 2, 2013, which followed successful mediation, the court made additional orders. As to father, the court required him to "engage in all medical appointments with the child in order to comprehend and prepare to understand the extent of care needed to care for a child with special medical needs" and apparently required him to complete a class on parenting the medically fragile child. The court ordered minor to continue in a foster home placement.

#### *Report for 12-Month Review*

The report for the 12-month review hearing (then scheduled for July 24, 2013) recommended that the court terminate family reunification services for both parents and order a section 366.26 hearing. It stated that minor "continues to be a medically-fragile child with extensive health-related difficulties requiring hypervigilance on the part of the caregivers." It restated that minor had been diagnosed with microdeletion of chromosome 15q13.3, a rare genetic condition. The report reiterated that the condition may result in "learning, speech and communication delays, seizure or abnormal EEG, delayed mobility due to low muscle tone, behavioral difficulties such as autistic spectrum disorder or Attention Deficit Hyperactivity Disorder (ADHD)" and sometimes in "aggressive behavior and rage and subtly unusual facial features."

The report indicated that minor had undergone surgery in May 2013 to repair his cleft palate and implant tubes in his ears. Minor continued to require feeding by G-tube because of his difficulty with feeding and daily monitoring of his caloric intake. He was

seeing a developmental specialist once a week through the Early Start Program and he was on the program's wait list for a physical therapist. He had been referred for "medical therapy" and he was also scheduled for an EEG. Minor was still experiencing swallowing difficulties and his caregivers were engaging in a lengthy and exhaustive effort to secure a "swallow exam." Minor was globally-delayed and he had been referred to San Andreas Regional Center.

In the report, the social worker emphasized that, because of minor's complex and pervasive medical needs, caregivers must be able to navigate the various medical systems and facilitate communication between multiple medical providers, to assess his changing needs and respond flexibly, and to be attentive to and identify changes in minor's behavior and presentation. In the prior six months, minor had seen a pediatrician, a pediatric neurologist, a pediatric gastroenterologist, a pediatric geneticist, a physical therapist, an audiologist, a pediatric ear, nose, and throat specialist, a craniofacial team, and a pediatric plastic surgeon. As to G-tube feedings, minor was at risk of death if he aspirated because he was given too much liquid by G-tube or he was not allowed to sit upright for a sufficient time after being fed by G-tube. The social worker stated that minor's mental health and well-being would require careful monitoring throughout his development.

Among other services, the social worker had arranged for G-tube feeding training at the hospital following minor's surgery in May 2013. The social worker had arranged for parents to attend medical appointments and for a social worker to be present at those appointments. A nurse had supervised the medical aspects of mother's visits with minor and provided training and support to mother regarding minor's medical care.

Although mother had been participating in medical appointments, she had difficulty retaining the information presented. The nurse who supervised the medical aspects of mother's visits and minor's foster parents had ultimately concluded that mother

would not be able to safely perform minor's G-tube feedings without the direct supervision of licensed nursing personnel. In her report, the social worker stated that it had been "reported/witnessed that not only does [mother] consistently require[] a lot of guidance and repetition to understand sometimes basic concepts, she also lacks the ability to adapt whatever information she is given to respond to any variation in [minor's] needs during visitation."

According to the report, mother had stopped submitting to the required drug tests. Mother had last tested on June 19, 2013. She had not shown up to or participated in her substance abuse treatment program since July 3, 2013. As of the writing of the report, mother had missed her doses of methadone for four days. Mother had not returned the social worker's calls made on July 17, 2013 and July 18, 2013. Mother had not shown up for her visit with minor on July 18, 2013. The social worker had no contact with mother since July 11, 2013 and the social worker was at that time "highly concerned about her risk for relapse . . . ."

As to petitioner, the social worker had engaged in "[f]ace to face monthly contact visits" with father. On March 29, 2013, she met with him and then submitted a referral for a Parenting the Medically Fragile Child class. She did this even before the juvenile court ordered petitioner to take the class at the six-month review hearing on April 2, 2013. At the time of the report, petitioner was enrolled in the class that commenced on July 26, 2013. The social worker had explored the possibility of other programs by contacting VMC and communicating with multiple treatment providers but, as of the time of the report, she had been unable to identify another resource.

Petitioner successfully completed the Parenting Children Ages 1-5 in late October 2012. Petitioner had not complied, however, with some other parts of his case plan.

The social worker reported that, although father was aware of minor's medical fragility and understood minor required "the highest level of diligence and attention,"



father had not attended minor's medical appointments and father had not made efforts to learn more about, or participate more in, minor's care. Petitioner had "consistently placed the burden of care" of minor on mother. He told the social worker during the monthly contact meetings that he was relying on mother to attend the medical appointments on his behalf because his job limited his participation. Parents viewed mother as minor's main caregiver and petitioner as the financial provider. Petitioner openly admitted that he was not in the position to meet minor's medical needs alone.

As to the requirement of attending weekly Al-Anon meetings, father had not provided the required proof of attendance to the social worker. Nevertheless, she believed, based on her conversations with father, that he was attending at least some of the meetings and he was benefiting from them.

In her report, the social worker concluded that neither parent was able to provide adequate care for minor even though both wanted to.

An addendum report, dated August 30, 2013, again informed the court that mother's last drug test had occurred on June 19, 2013. Father told the social worker on August 8, 2013 that he believed mother was using illicit substances again based on her behavior and appearance. On that same date, father stated that "it was 'an impossibility' for him to provide adequate care to [minor J.G.] on his own" and their "plan had been for [mother] to provide most of the medical care for [minor J.G.] while he worked."

The addendum report stated that, in a meeting on August 22, 2013 with petitioner and petitioner's brother, both parties agreed that petitioner was not capable of meeting minor's complex medical and other needs and it was in the minor's best interests to terminate family reunification services. The social worker was recommending termination of those services because mother was no longer communicating with the Department and she had "completely disengaged from all elements of her case plan" and petitioner father was unable to provide adequate parenting "given his inflexible work

schedule and the complex nature of [minor J.G.'s] medical needs." The social worker believed that petitioner had reached the realization that his son's medical needs surpassed his capacity to provide adequate parenting.

#### *Contested 12-Month Review Hearing*

A contested 12-month review hearing was held on August 30, 2013. Mother failed to appear. The 12-month review report and the August 30, 2013 addendum report were admitted into evidence. Petitioner called social worker Susannah Folick as a witness.

Folick acknowledged that petitioner father spoke Spanish and was essentially monolingual. She stated that she met with parents in mid-March and added the Parenting the Medically Fragile Child class. She initiated the referral in March or April but the first available class began on July 26, 2013 and would be conducted in English. An enrollment letter, dated July 19, 2013 and written in English, was sent to petitioner. Folick testified that if petitioner had expressed an interest in attending, she would have provided him with a Spanish language interpreter. She explained this option to him in Spanish during their monthly contact meetings.

Folick acknowledged that a key factor in this dependency case was minor's medical fragility. She admitted that she was concerned that petitioner did not have the parenting skills to care for a medically fragile child such as minor.

In addition to offering the Parenting the Medically Fragile Child class, Social Worker Folick had arranged for both parents to have access to minor's medical appointments beginning April 10, 2013 and a social worker to be present at all medical appointments. She arranged appointments with the doctors on the day of minor's surgery in May 2013 and the day after surgery. She had written a letter on behalf of petitioner to his employer to allow him to attend the surgery. Folick offered to find a nurse to provide "G-tube feeding training" during petitioner's visitation with minor. In their monthly

contact visits, Folick and petitioner discussed what more the social worker could do to support petitioner. In each of their monthly contact visits, they had discussed the importance of petitioner understanding minor's medical needs in the event mother was unable to reunify.

Petitioner did not attend any of minor's medical appointments. He was present, however, for his visit on the day of and the day after minor's surgery. He participated in the "G-tube feeding training" at the hospital on the day after surgery.

From the outset, petitioner had indicated to the social worker that parental roles were divided. Mother was the main caregiver and the parent to attend appointments with doctors. Petitioner had a rigid employer, he could not get out of work, and consequently he did not attend minor's medical appointments.

In Social Worker Folcik's opinion, petitioner was presently unable to take care of minor's medical needs and it would take much more than the parenting class to ready him for the role of caretaker. Father had not sought out opportunities to learn how to medically care for minor.

Folcik had looked for another parenting class that started before July 2013 but she had been unable to find an alternative. Even if petitioner father were able to complete a class regarding parenting the medically fragile child, she did not think it was likely that minor could be safely returned to him because he still would not be in a position to provide adequate care to minor. She explained that minor's medical needs were unique and different than the needs of other medically fragile children and minor's special needs would not be covered in the class. In her view, the class offered group support with other parents dealing with medically fragile children. But the class would not teach the specific techniques, daily care and routines, or the ability to read minor's condition "in the moment" as necessary to ensure minor's overall needs were met. The class would not adequately address the feeding problems, which posed "a risk of harm and potential

death" to minor, or his other particular medical issues. Minor had multiple medical providers and specialists and a rare chromosomal microdeletion syndrome. Any caregiver of minor needed to be acutely aware of his multiple specific needs and be able to track them over time among multiple medical professionals.

Petitioner father also testified. He stated that the letter that he had received in the mail about the parenting class was in English and he speaks Spanish and the class was being offered in English. According to petitioner, the social worker and he discussed the fact that the class was in English and she merely said that "she was going to see about that . . . ." He indicated that he was willing to attend the class with an interpreter but it would be better for him if the class was held in Spanish.

When petitioner was asked whether he understood how to feed minor, he replied, "I think supposedly and besides there's a pediatrician who's going to give notes about each change each day, keeping a record." Petitioner had fed minor using the G-tube only twice during visitation. He acknowledged that he was given the opportunity to attend minor's medical appointments and he had been offered the opportunity to receive training in how to care for his son. Petitioner admitted that he had not attended minor's medical appointments and he had not been trained to care for minor.

The juvenile court recognized that minor continued to be "a medically fragile child with extensive health related difficulties which require hypervigilance on the part of his caregivers." Minor still required feeding through a G-tube and he was seeing multiple medical professional in various disciplines. The court observed that the "threshold for adequate care [was] significantly higher than that for children without his complex medical needs."

As to the requirement that petitioner attend Al-Anon meetings, the court noted petitioner had never provided his Al-Anon meeting slips to the social worker. Although petitioner had introduced purported meeting slips into evidence at the 12-month review

hearing, the juvenile court found that "all of the entries appeared to be in the same handwriting even though different secretaries [were] listed for the various meetings." The court did not give "any weight" to the meeting slips because they "appear[ed] to be doctored."

The juvenile court concluded that the social worker had "worked hard to engage the parents in services and . . . offer services designed to meet the child's special needs." Petitioner father had a landscaping job that provided little flexibility and, although he had consistently expressed his love for minor, his job interfered with his ability to assume a caretaking role. Petitioner had chosen to rely upon mother to attend minor's medical appointments and, he had not, for the most part, attended them himself. The court concluded that petitioner did not comply with the most critical aspect of the case plan, attending minor's medical appointments, and he was "unlikely to do so in the foreseeable future due to his work commitments."

The court found that the social worker's testimony was both credible and persuasive. The juvenile court found that return of minor to his parents would create a substantial risk of detriment to his safety, protection, or physical or emotional wellbeing. It found by clear and convincing evidence that reasonable services, designed to aid parents to overcome the problems that led to minor's initial removal and continued out-of-home custody, had been offered or provided to them. The court terminated family reunification services and ordered a selection and implementation hearing (§ 366.26) to be held.

## II

### *Analysis*

The juvenile court was authorized to set a section 366.26 hearing at the 12-month review hearing provided there was "clear and convincing evidence that reasonable services ha[d] been provided or offered to the parents or legal guardians." (§ 366.21,

subd. (g)(4); see § 366.21, subd. (g)(1) ["The court may not order that a hearing pursuant to Section 366.26 be held unless there is clear and convincing evidence that reasonable services have been provided or offered to the parent or legal guardian"]; see also §§ 361.5, subds. (a)(1) & (a)(3) [period for reunification services]; 366.21, subd. (f) ["The court shall also determine whether reasonable services that were designed to aid the parent or legal guardian to overcome the problems that led to the initial removal and continued custody of the child have been provided or offered to the parent or legal guardian"].) "In any case in which the court orders that a hearing pursuant to Section 366.26 shall be held, it shall also order the termination of reunification services to the parent or legal guardian." (§ 366.21, subd. (h).)

"The adequacy of reunification plans and the reasonableness of DCFS's efforts are judged according to the circumstances of each case. (*Robin V. v. Superior Court* [(1995) 33 Cal.App.4th 1158,] 1164 . . . .) Moreover, DCFS must make a good faith effort to develop and implement a family reunification plan. (*Ibid.*)" (*Amanda H. v. Superior Court* (2008) 166 Cal.App.4th 1340, 1345.) "To support a finding reasonable services were offered or provided, 'the record should show that the supervising agency identified the problems leading to the loss of custody, offered services designed to remedy those problems, maintained *reasonable* contact with the parents during the course of the service plan, and made *reasonable* efforts to assist the parents in areas where compliance proved difficult . . . .' (*In re Riva M.* (1991) 235 Cal.App.3d 403, 414 . . . .)" (*Tracy J. v. Superior Court* (2012) 202 Cal.App.4th 1415, 1426.)

This court reviews a juvenile court's finding that reasonable reunification services have been offered and provided to the parents under the substantial evidence standard. (*Amanda H. v. Superior Court*, *supra*, 166 Cal.App.4th at p. 1346; see *In re Misako R.* (1991) 2 Cal.App.4th 538, 545.) Reviewing courts "determine whether substantial evidence supports the trial court's finding, reviewing the evidence in a light most

favorable to the prevailing party and indulging in all legitimate and reasonable inferences to uphold the court's ruling. (*In re Misako R.* (1991) 2 Cal.App.4th 538, 545 . . . )" (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 598.) In evaluating the sufficiency of the evidence, "[i]t is not our function, of course, to reweigh the evidence or express our independent judgment on the issues before the trial court. (*In re Laura F.* [(1983) 33 Cal.3d 826,] 833 . . . )" (*In re Jasmon O.* (1994) 8 Cal.4th 398, 423.)

It is not disputed that the mother was offered or provided reasonable services to address her substance abuse problems. Nevertheless, at the time of the 12 month review, mother was not in contact with the social worker, she was not following her case plan, and she may have relapsed into substance abuse.

Early on, the Department gave a list of Spanish-speaking Al-Anon meetings to petitioner. He failed to provide written proof of attendance to the social worker as required and the juvenile court rejected the proffered proof of attendance at the review hearing as incredible.

Like mother, petitioner was provided with classes relevant to parenting minor, who was taken into protective custody not long after being born. Although petitioner had been referred to a parent orientation class, the record does not show that he attended and successfully completed the class as did mother. Petitioner was offered and did complete a class on parenting children ages one to five. At the time of the 12-month review report he was enrolled in the Parenting the Medically Fragile Child class, which was set to start on July 26, 2013.

As indicated, the social worker arranged for parents to attend minor's medical appointments, under the supervision of a social worker, beginning on April 10, 2013. She arranged for the G-tube training at the hospital following minor's surgery in May 2013. The social worker wrote a letter to petitioner's employer to facilitate his attendance at the surgery. The social worker met monthly with petitioner in person and, during each

of those visits, she again explained the importance of understanding minor's medical needs. Nevertheless, petitioner had not attended minor's medical appointments. The social worker also offered to find a nurse to provide "G-tube feeding training" during visitation with minor but petitioner apparently did not accept this offer.

There is no dispute that minor is a medically fragile child with complex and ongoing medical needs. Unfortunately for petitioner, parents chose to operate under a division of labor that led petitioner to not attend his medically fragile son's medical appointments and to leave the responsibility of learning about minor's medical needs and care to mother.

Petitioner now claims that reasonable services were not provided or offered because the Department failed to provide him with "a viable referral to a Medically Fragile Parenting class" conducted in Spanish. We reject this claim.

The juvenile court impliedly found credible the social worker's testimony indicating that she took steps to enroll petitioner in the Parenting the Medically Fragile Child class even before the court made its order and she actively sought to find an alternative class that began before July 2013. The court also believed her testimony that she offered to provide a Spanish interpreter to petitioner to enable him to attend the class that began July 26, 2013, which was to be given in English, and she explained this option to him in Spanish but he expressed no interest in attending. We note that at the time of the 12-month review hearing in late August 2013, petitioner would have been about a month into that class had he chosen to attend with an interpreter.

While attending the July 2013 Parenting the Medically Fragile Child class with an interpreter was not a perfect solution for petitioner, "[t]he standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances." (*In re Misako R.*, *supra*, 2 Cal.App.4th at p. 547.) In light of all the services provided or offered, the timing of the



class and language in which it was conducted did not render the services as a whole unreasonable.

On this record, we conclude that substantial evidence supports the juvenile court's finding that reasonable services were provided or offered to petitioner.

#### DISPOSITION

The petition for writ of mandate is denied. Petitioner's request for a stay of the section 366.26 hearing, presently calendared for December 18, 2013, is denied as moot. Our decision is final immediately. (Cal. Rules of Court, rules 8.452(i), 8.490(b).)

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ELIA, J.

WE CONCUR:

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RUSHING, P. J.

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PREMO, J.